IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 480 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DAHYABHAI V DAVE &1 - Applicant(s)

Versus

ACHARYA NARENDRA PRASADJI ANAND PRASADJI MAHARAJ &9 - Opponent(s)

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Appearance :

MR ASHOK K PADIA for Petitioner No(s).: 1 - 1.
DELETED for Respondent No(s).: 1,7.
MR BHARAT J SHELAT for Respondent No(s).: 2,3,6.
SERVED BY RPAD - (R) for Respondent No(s).: 4.
RULE SERVED for Respondent No(s).: 5.
RULE UNSERVED for Respondent No(s).: 8,9,10.

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 07/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 7th January, 1989 passed by the learned Joint District Judge, Vadodara in Regular Civil Appeal No.306 of 1982, the defendants no.1 and 2 in Rent Suit No.306 of 1978 have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel &Lodging House Rates Control Act, 1947 (hereinafter referred to as. “the Rent Act”).

The plaintiffs are the Trust and its Trustees (hereinafter referred to as “the Trust”). The Trust owns a building known as “Swaminarayan Temple Chawl” situated at Vadodara. One of the rooms bearing No.52/42 in the said Chawl was leased to one Vallabhbhai Makanji for a monthly rent of Rs.5=50 (including 0=50 ps. water charge). After the death of the said Vallabhbhai, his two sons i.e. the defendants nos.1 and 2 became tenant in the suit room. The Trust instituted Rent Suit No.369 of 1978 in the Court of Small Causes, Vadodara for recovery of possession of the suit room. It was alleged that the defendants nos.1 and 2 were in arrears of rent and that the defendants nos.1 and 2 had unlawfully sublet the suit room to the defendant no3. The defendant no.3 contested the suit vide written statement Exh.17. He denied that he was the sub-tenant in the suit room or that he was residing in the suit room. The defendant nos.1 and 2 filed written statement Exh.12 and contested the suit. They denied the allegations made against them in the suit and further stated that the standard rent of the suit room was Rs.3.50. The defendants deposited a sum of Rs.320=00, being the amount of rent due for the period from 1st November, 1972 to 31st March, 1978 before the trial Court. The possession of the suit room was sought to be recovered on the grounds of unlawful subletting, of non-user and of non-payment of rent.

The learned trial Judge, by judgment and order dated 29th September, 1992, recorded the finding against the Trust and dismissed the suit. It was held that the petitioner had failed to prove that the defendant no.3 was in possession of the suit room. It was admitted that the defendant no.2 was residing with his son at Ahmedabad. However, according to the defendant no.2, he occasionally did visit Vadodara and resided in the suit room. The learned Judge, therefore, held that the defendant no.2, if were residing at Ahmedabad with his son for his personal convenience and was occasionally visiting the suit room, it could not be said that the suit room was not used without reasonable cause.

Feeling aggrieved, the Trust preferred Regular Civil Appeal No.306 of 1982 in the Court of District Judge, Vadodara. The learned Joint District Judge, by impugned judgment and order dated 7th January, 1989, confirmed the finding of the trial Court as to the subletting against the Trust. However, with respect to non-user, the lower appellate court held that admittedly the defendant no.2 was not residing in the suit room. It was the case of the said defendant that though he was residing at Ahmedabad, he occasionally visited the suit room. The lower appellate court held that the casual visits cannot be equated with continuous residence. The lower appellate court accordingly held that the Trust was entitled to recover possession of the suit room as envisaged by Section 13(1)(k) of the Rent Act. The Lower Appellate Court passed decree for possession against the defendants nos.1 and 2. Therefore, the present Revision Application.

In view of the admitted fact that neither of the defendants nos.1 and 2 was residing in the suit room and that the defendant no.2 visited only occasionally, in my opinion, the lower appellate court has rightly held that the occasional visits do not amount to

continuous residence. The defendants, therefore, were liable to decree for eviction.

No ground for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(MISS R.M.DOSHIT, J.)

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